

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

GINGER DAYTON, an individual;)
vs.)
Plaintiffs,)
vs.) Civil Action No.:
STEVEN CHAD TAGGART, et al.;) 3:07CV599-MEF
Defendants.)

DEFENDANTS' REQUESTED JURY CHARGES

COME NOW the Defendants, by and through counsel, and submit the following proposed jury charges to be used in the trial of the above-styled case.

1. When a judge and a jury sit together as a Court of law it is the duty of the judge to see that the trial progresses in an orderly fashion; to rule upon all legal matters that are presented; to define the issues involved and instruct the jury as to the law applicable to the particular case. It will be your duty as jurors to follow the law as so stated to you by the judge. You will therefore render a verdict in accordance with the facts as you determine them from the evidence and the law as given to you by the Court. (APJI 1.05).

Given Denied

2. You will be the sole and exclusive judges of the facts. It will be your duty to attempt to reconcile the testimony of all the witnesses so as to make them all speak the truth, if this can be done reasonably. If you cannot reasonably reconcile all of the testimony it is then your duty to consider the testimony with the view of determining what the true facts are. In so doing you may accept or reject

any part of the testimony of any witness, and accept only the testimony you consider worthy of belief. (APJI 1.06).

Given

Denied

3. In determining what the true facts are from the evidence you may take into consideration any natural interest or bias a witness may have as a result of any connection with the case. You may take into consideration the interest or bias a witness may have shown while testifying. You may take into consideration the demeanor of any witness, as to whether the witness has apparently testified frankly or evasively. You may take into consideration any matter which you would in your every day affairs, in passing upon the truthfulness and accuracy of the testimony. Weigh the testimony in the light of your common observation and experience and reach a verdict that will be based upon the truth as you determine it from all of the evidence. (APJI 1.07).

Given

Denied

4. During this trial I will rule on objections by counsel as to the admissibility of testimony and other evidence. It will be the privilege of counsel and his duty, to make such objections to the offer of evidence which counsel deems illegal and improper. You must not concern yourself with the reasons for my rulings since they are controlled and required by rules of law. You are not to speculate as to possible answers to questions which I do not require to be answered. The overruling of objections to evidence is not intended to indicate the weight to be given such evidence by you. Such admitted evidence will be considered along with all of the other evidence. You are to disregard all evidence which may be excluded by the Court. (APJI 1.08).

Given

Denied

5. Following the close of the evidence in this case counsel will have the privilege of again addressing you. This is sometimes referred to as the summation. We refer to it as the argument of counsel. Counsel have the right to discuss the evidence and all reasonable inferences to be drawn therefrom to help you arrive at a just and true verdict. Counsel for the plaintiff will have the right to open the arguments. Counsel for the defendants has the right to follow the opening argument. Counsel for the plaintiff has the right to the closing argument. (APJI 1.09).

Given

Denied

6. In arriving at a verdict in this case you must not permit sympathy, prejudice or emotion to influence you. All parties are equal before the law and must be treated as equals in a court of justice. (APJI 1.12).

Given

Denied

7. Ladies and Gentlemen of the jury, the Court will now instruct you on the law of damages. The burden is on the plaintiff to reasonably satisfy you from the evidence of the truthfulness of her claim. If after a consideration of all of the evidence in this case, you are not reasonably satisfied of the truthfulness of the plaintiff's claim, your verdict should be for the defendant(s). In this event you would go no further. This would end your deliberations. On the other hand, if after a consideration of all the evidence in the case you are reasonably satisfied of the truthfulness of the plaintiff's claim, your verdict should be for the plaintiff. In this event it will be necessary for you to arrive at an amount to be awarded in the verdict form which I will read to you and describe later in my charge. I now give you the following rules of law to assist you in your deliberations in arriving at an amount in the event you find for the plaintiff. (APJI 11.00).

Given

Denied

8. Compensatory or actual damages are allowed and should be awarded where the plaintiff reasonably satisfies the jury from the evidence that plaintiff has been injured or damaged as a proximate result of an act of negligence on the part of the defendants. (APJI 11.01).

Given

Denied

9. The purpose of awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury sustained. Compensatory damages are intended as money compensation to the party wronged, to compensate him for his injury and other damages which have been inflicted upon him as a proximate result of the wrong complained of. (APJI 11.02).

Given

Denied

10. In awarding damages in any case, your verdict must not be based on mere speculation or conjecture but must be based upon the evidence and the just and reasonable inferences shown thereby. (APJI 11.22).

Given

Denied

11. An inference of a fact is a conclusion of the existence of a fact not known or proved, which may reasonably arise from facts that are known or proved. (APJI 15.00).

Given

Denied

12. The jury may draw reasonable inferences from the evidence, but there must be a reasonable connection between the fact proved and the ultimate fact inferred. Inferences may be drawn only

from facts established by the evidence. An inference may not be based upon another inference. (APJI 15.01).

Given

Denied

13. You are the sole judges of the evidence and of the credibility of the witnesses. You may accept or reject any part of the testimony of any witness and you should accept only the testimony you consider worthy of belief. In determining the weight to be accorded the testimony of any witness, you may consider the demeanor of the witness while on the witness stand; his apparent candor or evasion or the existence or non-existence of any bias or interest. (APJI 15.02).

Given

Denied

14. Lay witnesses have testified in this case and have been permitted to express an opinion and/or draw a conclusion. In passing upon the facts you are not required to accept the conclusions or expressed opinions of these witnesses, but must determine for yourselves the weight to be accorded to such testimony and evidence when considered in connection with all the other evidence material to the issue. (APJI 15.06).

Given

Denied

15. An expert witness is one who by education, training and/or experience has attained such skill, knowledge or experience of some science, profession, business or occupation, not of common knowledge to the average layman. (APJI 15.07).

Given

Denied

16. Witnesses have testified in this case as experts and have expressed opinions based upon assumed facts which were set forth in hypothetical questions. The weight to be accorded such testimony is dependent entirely upon the truth of the material facts stated in the hypothetical questions and before considering the opinions of the experts, you should first examine carefully all the material facts stated in the hypothetical questions and be reasonably satisfied that they have substantially been proved to be true. (APJI 15.08).

Given

Denied

17. Witnesses have testified in this case as experts and have been permitted to express an opinion or draw a conclusion. In passing upon the facts you are not required to accept the conclusions or expressed opinions of expert witnesses, but must determine for yourselves the weight to be given to such testimony and evidence when considered in connection with all the other evidence material to the issue. (APJI 15.09).

Given

Denied

18. Negligence is the failure to use reasonable care to prevent harm to oneself or others. A person's conduct is negligent when he either does something that a reasonably prudent person would not do in a similar situation, or he fails to do something that a reasonably prudent person would have done in a similar situation. You must decide if the defendant was negligent in this situation. (APJI 28.01).

Given

Denied

19. If you are reasonably satisfied from the evidence that the defendant Steven Chad Taggart was negligent and that Mr. Taggart's negligence caused the plaintiff's harm, your verdict must be for Ms.

Dayton; however, if you find that Mr. Taggart was not negligent or if you find that Mr. Taggart's negligence was not the cause of Ginger Dayton's harm, your verdict must be for Mr. Taggart and J. B. Hunt Transportation. (APJI 28.02).

Given

Denied

20. If you are reasonably satisfied from the evidence that the defendant was negligent and that the defendant's negligence proximately caused the alleged injury, then your verdict must be for the plaintiff; however, if you find that the defendant was not negligent or if you find that the defendant's negligence was not the proximate cause of the plaintiff's injury, then your verdict must be for the defendant. (APJI 28.03).

Given

Denied

21. The negligence of two (or more) persons may cause harm. Each person's negligence is a cause of harm if it naturally and probably brings about the harm. The fact that one or more person is not a defendant in this case does not relieve the other person of responsibility for the harm.

(APJI 28.04)

Given

Denied

22. If a person, without fault of his own, is faced with a sudden emergency, he is not to be held to the same correctness of judgment and action as if he had time and opportunity to fully consider the situation, and the fact, if it be a fact, that he does not choose the best or safest way of escaping peril or preventing injury is not necessarily negligence, but the standard of care required in an emergency situation is that care which a reasonably prudent person would have exercised under the same or similar circumstances. (APJI 28.15).

Given

Denied

23. Plaintiff Ginger Dayton says that she was harmed by Mr. Taggart's and J. B. Hunt's negligent conduct. To recover damages on this claim, Ms. Dayton must prove to your reasonable satisfaction all of the following:

1. That Mr. Taggart and J. B. Hunt were negligent;
2. That Ms. Dayton was harmed; and
3. That Mr. Taggart's and J. B. Hunt's negligence was a cause of Ms. Dayton's harm.

(APJI 28A.00).

Given

Denied

24. Negligence is the failure to use reasonable care to prevent harm to oneself or others. A person's conduct is negligent when he either does something that a reasonably prudent person would not do in a similar situation, or he fails to do something that a reasonably prudent person would have done in a similar situation. You must decide if the defendants were negligent in this situation. (APJI 28A.01).

Given

Denied

25. The cause of harm is that cause that naturally and probably brings about the harm. (APJI 33.00).

Given

Denied

26. Ladies and gentlemen of the Jury, for your convenience, the court has prepared for your use in this case forms of verdict which will be explained to you. No inferences are to be drawn by you from

the fact that the court has supplied you with these forms, or from the order in which the court reads them to you. When you have reached a verdict you will select and complete the form which corresponds to your verdict and which is to be signed by your foreman. All twelve of you must agree on any verdict which you return to the court. (APJI 37.00)

Given Denied

27. The court instructs you that it would be improper, in arriving at your verdict, for you to agree to be bound beforehand, for each juror to assess the damages separately, total the twelve separate figures, then divide the total by twelve to arrive at your verdict. This is known as a quotient verdict and is illegal. (APJI 37.01).

Given Denied

\s\ Christopher S. Rodgers

Christopher S. Rodgers
S. A. Bradley Baker, III

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

\s\ Christopher s. Rodgers

Of Counsel

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